

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re

N. TERRY FAYAD,

Debtor

LINDA J. MASSOD,

Plaintiff

v.

N. TERRY FAYAD,

Defendant

Chapter 7

Case No. 00-14457-RS

Adversary Proceeding

No. 01-1062

**MEMORANDUM OF DECISION AND ORDER
REGARDING ABSTENTION AS TO COUNTERCLAIM**

In this adversary proceeding for determination of the dischargeability of a debt, the Defendant and Debtor, N. Terry Fayad, has asserted counterclaims for breach of contract, conversion, and interference with advantageous relations. For reasons articulated in its earlier Order to Show Cause, the Court asked the parties to show cause why the Court should not abstain from exercising jurisdiction over the counterclaims. By their joint response, the parties have now urged the Court to exercise jurisdiction over the counterclaim and also over the Plaintiff's underlying claim (which has not yet been pleaded in this proceeding). To that end, they have agreed that this Court could adjudicate the claim and counterclaim.¹

Despite the parties' urgings, this Court will abstain from exercising jurisdiction over the counterclaims. The counterclaims have been abandoned and are not assets of the bankruptcy

¹ It is still unclear whether either party would demand a jury trial on the underlying claims and counterclaims and whether they would assent to this Court's conducting a jury trial. See 28 U.S.C. § 157(e).

estate; their liquidation will not affect the estate or its administration. Moreover, the counterclaims arise entirely under state law and are not core proceedings within the meaning of 28 U.S.C. § 157(b). If the counterclaims are “related to” this bankruptcy case within the meaning of the bankruptcy jurisdiction statutes, 28 U.S.C. §§ 1334(b) and 157(a) and (b), the relation is at best minimal, the counterclaims having little or no bearing on the case at all.² Certainly, these are not claims of the type on which the bankruptcy courts were intended to focus their attention. Litigating such claims here necessarily reduces the time available for this Court to devote to core matters in this and other cases. Also, but for the bankruptcy case, such claims would be brought in the state courts; and where the bankruptcy interest in the case is as attenuated as it is here, comity with the state courts counsels in favor of abstention. In sum, the relation of the parties’ underlying claims and counterclaims to this bankruptcy case is insufficient to overcome countervailing concerns for judicial economy (for the court if not for the parties) and for comity with the state courts.

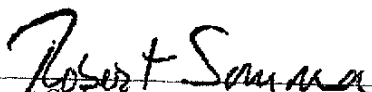
² At best, they serve to reduce (by setoff) a debt that, if Plaintiff is successful, will be excepted from discharge. On the other hand, if the end result of the dischargeability claim is a judgment for the Debtor, the counterclaim will have no effect whatsoever on the core bankruptcy concern, which is adjustment of the debtor-creditor relationship.

ORDER

For the reasons set forth above, the Court hereby abstains under 28 U.S.C. § 1334(c)(1) as to the Debtor's counterclaims and limits the subject matter of this adversary proceeding to nondischargeability counts in Plaintiff's complaint.

Date:

July 25, 2005


Robert Somma
United States Bankruptcy Judge

cc: Joel P. Suttenger, Esq., for Linda J. Massod
Peter J. Arvanites, Esq., for Debtor